

REMARKS

All pending elected claims 23, 25, 26 and 28-36 have been rejected under §112 as containing new matter. In this response, Applicant overcomes the new matter rejection in two ways. First, Applicant submits herein that the subject matter of all pending claims is supported by the application as filed. Second, Applicant includes in this response new claims 37 and 38 that are identical to claims 23 and 32, respectively, except claims 37 and 38 do not contain the phrase “before filling the container” that was objected to by the Examiner. Hence, in addition to showing that the new matter rejection is improper, Applicant has submitted claims without the objected to subject matter. These new claims do not present any new issues, do not require any further work by the Patent Office, they put the application in condition for allowance, and at the very least, the new claims put the application in better condition for appeal, if necessary. Reconsideration and withdrawal is requested of the rejection of all the claims under §112.

The Rejections

All of the pending elected claims 23, 25, 26, 28-36 were rejected under §112 as containing new matter. The current Office Action contains no rejections under §§102 or 103.

Claim 23

Claim 23 has been rejected because “[t]he limitations that the cap is separated, disposed over the opening and sealed to the opening prior to filling of the container, is considered new matter and is not supported by the original disclosure.” Claim 23 is

directed to a method of forming a fuel container, and recites, among other things, a step of “heat welding the cap to the container circumferentially continuously to permanently attach and seal the cap to the container to permanently close, seal and provide a fuel vapor barrier for the opening.” The application in its entirety, including the claims, conveys to ordinarily skilled artisans that this step is accomplished before the container is filled with fuel because containers filled with fuel are not thereafter subjected to heat welding operations. It is readily apparent and well-known that welding operations are not carried out in the presence of fuel, and certainly not in the presence of hydrocarbon fuels for automotive vehicles, which is one of the presently preferred and disclosed embodiments of the fuel container. Besides the inherent danger in performing heat welding operations in the presence of fuel, filled fuel containers are heavier and more difficult to handle so post-mold processing of such tanks is typically done while the fuel containers are empty. Indeed, this is yet another difference between the presently claimed invention and the cited references, such as Arnold and Kani, that are directed to non-analogous art like shampoo and squeeze-type dispensing containers.

New Claim 37

New claim 37, except for the occurrences of the phrase “before filling the container,” is identical to claim 23. Based on the explanation for the rejection set forth in the Office Action, Applicant believes that the absence of the phrase “before filling the container” from claim 37 obviates the new matter rejection as applied to claim 23. Therefore, even though Applicant disagrees with the new matter rejection in view of what

the application conveys to ordinarily skilled artisans as set forth above, claim 37 is provided as an additional measure to obviate the new matter rejection.

Further, there are no pending rejections based on any prior art references, and the only references of record are deficient with respect to claim 37 for at least those reasons set forth with respect to claims 23 in the response dated December 17, 2003 (received in the PTO on December 22, 2003). Among these reasons, Kani undisputedly does not disclose any flash being formed, any compression molding, any heat welding, any permanent attachment of the cap to the container, any multilayered container, any multilayered cap, and/or either the container or the cap having any hydrocarbon fuel vapor barrier layer of a polymeric material. Arnold undisputedly does not have closures that are separated from the molded container, does not have any welding, and provides closures are not permanently fixed and sealed to the container around either of the ports 16, 18 of the container. And, undisputedly, Duhaime does not teach any compression molding of the plug, compression molding of the plug in the same mold 12 simultaneously with blow molding the container, molding the plug in flash, producing any flash while blow molding the container, and/or separating and utilizing any simultaneously molded plug to permanently close, seal and provide a vapor barrier for the opening. Further remarks are included with respect to claim 23 in Applicant's response to the previous office action.

Claim 23 and Claim 37 are Patentable

Whether considered alone or in combination, the Kani, Arnold and Duhaime references do not disclose, suggest or teach skilled persons applicant's specific concept,

method steps defined by claims 23 or 37, nor the significant practical advantages, all of which are part of the subject matter as a whole which must be considered in determining patentability.

Claims 25, 26 and 28-31

Each of claims 25, 26 and 28-31 is ultimately dependent on claim 23 and hence defines patentable subject matter for at least the foregoing reasons on which claim 23 does so.

Claims 32 and 38

Independent claim 32 defines the method of forming a fuel container with an opening and a sealing cap by the steps of providing a pair of mold halves with a first cavity to form the container by blow molding and an adjacent second cavity to form a cap in a flash section by compression molding, providing a parison with at least one polymeric hydrocarbon fuel vapor barrier layer disposed between inner and outer layers of a different polymeric material which is heat weldable, closing the mold to compress in the second cavity two overlapping portions of the parison between the mold halves to form a flash section in the second cavity and at least one cap in the flash section by compression molding with the cap having twice as many vapor barrier layers as the vapor barrier layers of the container and with the cap having two adjacent inner layers of a different polymeric material adhered together, providing a pressurized fluid in the parison to expand the parison in the first cavity to form the container by blow molding, forming an opening through the container at a location spaced from the cap, before filling the

container separating the cap from the flash section, before filling the container disposing the cap over the opening and before filling the container heat welding the cap to the container circumferentially continuously to permanently attach and seal the cap to the container to permanently close, seal and provide a vapor barrier for the opening.

Claim 38 is identical to claim 32 except it does not include the phrase “before filling the container.” This is believed to obviate the new matter rejection as applied to claim 32, while also defining patentable subject matter over the cited art as fully set forth in the prior response dated December 17, 2003.

Claims 32 and 38 Are Patentable

Claims 32 and 38 define patentable subject matter under §103 for at least all the reasons set forth above with respect to claims 23 and 37.

Moreover, claims 32 and 38 further define method steps which result in the cap having twice as many barrier layers as the number of barrier layers of the container and two adjacent inner layers of the different polymeric material adhered together. None of the references disclose, suggest or teach to skilled persons either this further specific concept, the method steps defined by claims 32 and 38 to produce such a cap construction nor its significant practical advantages which include greatly increasing the resistance to hydrocarbon fuel vapor permeation through the cap closing the opening and sealed to the container. Accordingly, claims 32 and 38 define patentable subject matter for at least these additional reasons.

Claims 33-36

Each of claims 33-36 is ultimately dependent on claim 32 and hence defines patentable subject matter under §103 for at least the reasons for which claim 32 does so.

CONCLUSION

As previously presented or newly added, all the claims 23, 25, 26 and 28-38 are believed to define patentable subject matter under §103 for at least the foregoing reasons and reconsideration and allowance thereof is respectfully requested.

If, after considering this response, the Examiner is of the view that any of the claims are not in a condition for allowance, a telephone interview with applicant's undersigned attorney, Matthew J. Schmidt, is requested so that immediate consideration can be given to any further amendments suggested by the Examiner or otherwise needed to place all of the claims in a condition for allowance. The Examiner is asked to schedule or initiate this interview by telephoning Matt Schmidt at (248) 689-3500 who normally can be reached Monday through Friday between 9:00 A.M. and 5:00 P.M.


Any fees can be charged, or overpayment refunds can be made, to deposit account 50-0852.

Respectfully submitted

Reising, Ethington, Barnes, Kisselle, P.C.

MJS/jg

By



Attorneys for Applicant
Telephone (248) 689-3500
Facsimile (248) 689-4071